

Message

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Sent: 9/12/2018 7:46:43 PM
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Subject: Pre-decisional/confidential - 404 Assumption
Attachments: Draft - FL EPA MOA 9_11_18_Clean.docx

All,

Below is the current status of the MOAs for 404 Assumption. Other matters are moving smoothly. The state has indicated that they plan to propose the rule in late September, followed by 28 days for public comment/hearings. The Secretary may sign the rule after that time. We are having preliminary conversations with the Tribes (Poarch, Miccosukee and Seminole) to facilitate consultation following our receipt of the package from the State. Those conversations are going well. Please let me know if you need additional information or clarification.

Thanks
jeaneanne

Status of the EPA-FDEP MOA

During meetings in Tallahassee on September 5-7, FDEP agreed to include EPA's proposed ESA language, with the exception of a sentence that acknowledged that the Corps may designate FDEP as a non-Federal representative for the purposes of informal ESA consultation. FDEP and EPA staff agreed to other minor revisions to bring the MOA into closer alignment with federal regulations. A clean version and of the draft MOA is attached. FDEP intends to share copies of the revised draft MOA with the Corps, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service later this week. The MOA will be signed at a time closer to State submittal so that any revisions identified as the state finalizes its program can be made to the document.

Status of the Corps-FDEP MOA

Based on the most recent version of the draft MOA that was shared with EPA staff, there is no specific language that presents problems or issues regarding consistency with federal requirements. However, as the list and description of retained waters is still under development by the Corps, the EPA does not know the level of clarity and specificity that will be provided regarding the delineation between retained waters and assumed waters. The Corps and FDEP have also not reached closure on who will have authority to make modifications to currently active Corps permits in assumed waters, which potentially has implications for the long-term (i.e., > 5-year) permits issued by the Corps. The draft MOA now provides clarity that permits are required for civil works projects in assumed waters that are not subject to 404(r). In addition, EPA shared language for FDEP's consideration that acknowledges that the Corps may designate FDEP as a non-Federal representative for the purposes of informal ESA consultation.